IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 476 OF 2005

Amol Trading Company ... Appellant
(Ori. Def. No.1)

V/s

D.R. Madre & anr. ... Respondents
(Ori. Plaintiffs)

Mr. M.R. Deshpande for the appellant.

Ms. Priyadarshini A. Birje holding for Aniketa Aher - Sawant for the respondent.

CORAM: P.V. KAKADE, J.

DATED: 21ST JUNE, 2005

P.C.:

1. This appeal is preferred against the judgment and order passed by the Addl. District Judge, Solapur dated 9.3.2000 dismissing the appeal filed by the appellant and confirming the judgment and order passed by the Civil Judge, Sr.Divn., Solapur, dated 31.7.1995 partly decreeing the suit for recovery of the amount of Rs.30,754.93 ps. alongwith the interest at 12% p.a. as per law.

2. I have heard the learned counsel for the appellant.

Perused the judgments of both the Courts below.

The plaintiff had filed the suit for recovery of price of purchase of goods amounting to Rs.30,754.93 ps. alongwith the interest thereon. The learned Trial Judge, on the basis of available evidence, has come to the conclusion that the plaintiff had proved that the defendant No.1 had purchased the goods through defendant No.2 who was working as Muneem and servant of defendant No.1 and, as such, the decree came to be passed against the defendant No.1.

The appeal was carried to the District Court, Solapur. The learned Addl. District Judge, heard both sides and came to the conclusion that the appeal deserves to be dismissed as the findings recorded by the learned Trial Judge were just, legal and proper. Hence the present appeal.

3. At the outset, it may be noted that there is absolutely no substantial question of law involved in this appeal. It is apparent from the record that the respondent - defendant No.2 though a Muneem of the defendant No.1 had filed his written statement vide Exh.46 and deposed against the defendant No.1 and in

favour of the plaintiff stating that he had purchased the goods vide Exhs. 52, 53 and 54 from the plaintiff in his capacity as a Muneem of the defendant No.1 and had delivered the goods with the appellant - defendant No.1. He also admitted his signatures on the said bills of Exhs. 52 to 54. In my considered view, this aspect clinches the issue and negatives the submissions made on behalf of the appellant that the appellant was not liable for any act of defendant No.2 which was not in his capacity as Muneem or servant of defendant No.1. Be that as it may, the fact remains that both the Courts below have recorded the concurrent findings against the present appellant. It is needless to mention that the legal position in this regard is quite clear which shows that the concurrent findings of facts howsoever erroneous cannot be disturbed by the High Court in exercise of powers under Sec. 100 of the C.P.C. It is not within the domain of the High Court to investigate the grounds on which the findings were arrived at by the last Court of fact, being the first appellate Court. In the present case before us, it is apparent that defendant No.2 Muneem has testified against his own master and, therefore, in absence of evidence to the contrary it cannot be held that the goods were not purchased for and on behalf of appellant defendant No.1.

4. In the result, the appeal has no merits and stands dismissed with no order as to costs.

Consequently, the Civil Application No. 1471 of 2004 also stands dismissed.

(P.V. Kakade, J.)